

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDGARDO INNIS and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, Los Angeles, CA

*Docket No. 99-2131; Submitted on the Record;
Issued August 22, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on August 29, 1998.

Appellant then a 60-year-old immigration inspector filed a traumatic injury claim on October 15, 1998 alleging that on August 29, 1998 he sustained a herniated disc in the performance of duty. Appellant further alleged that his injury was aggravated while performing additional work duties on September 1, 1998. Appellant indicated that he was evaluated on August 31 and September 9, 1998 for severe pain on the left side of his back, however, he was not diagnosed with a herniated disc until September 25, 1998 after a magnetic resonance imaging (MRI) scan was performed. He worked intermittently after the alleged injury and returned to work on October 13, 1998.

Appellant submitted a memorandum dated October 6, 1998 from Dr. Dorene Opava-Rutler, his attending physician, in which she indicated that he had been temporarily totally disabled from work beginning September 7 through October 11, 1998 due to a herniated lumbar disc and noted his work restrictions.

On March 16, 1999 the Office of Workers' Compensation Programs requested that appellant submit additional information, particularly probative medical evidence containing a reasoned opinion on the relationship of the diagnosed condition to his federal employment activity in order to support his claim. The Office afforded appellant 30 days within which to respond. By facsimile dated April 1, 1999 appellant provided additional factual information and indicated that he had had difficulty retrieving medical documentation from the Veterans' Administration (VA) Hospital where he was treated for the alleged injury. Appellant submitted a completed authorization and release form to the Office, by which it requested medical records from the VA Hospital on March 31, 1998 on his behalf.

By decision dated April 16, 1999, the Office denied appellant's claim for compensation on the grounds that the evidence was insufficient to establish a causal relationship between an employment-related event and his alleged medical condition.

The Board finds that appellant failed to meet his burden of proof that he sustained an injury in the performance of duty on August 29, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

The Office, in determining whether an employee actually sustained an injury in performance of duty, first analyses of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and this generally can only be established by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

In the present case, appellant initially submitted little evidence in support of his claim for a personal injury sustained in the performance of duty. The Office notified appellant of this defect in the record and allowed 30 days for a response. Prior to the April 16, 1999 decision, the Office had only received the October 6, 1998 memorandum from Dr. Opava-Rutler, which indicated that appellant had been temporarily totally disabled due to a herniated lumbar disc. Appellant did not submit a rationalized medical opinion establishing a causal relationship between his diagnosed condition and factors of his employment. Appellant indicated that it had been difficult to obtain records and reports from the VA Hospital and the Office assisted him by also making a request, however, the hospital did not forward the requested records. Appellant was afforded 30 days to submit additional evidence, however, no further evidence was received. Causal relationship must be substantiated by reasoned medical opinion evidence, which is

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Elaine Pendleton*, *supra* note 1.

⁴ *John M. Tornello*, 35 ECAB 234 (1983).

appellant's responsibility to submit.⁵ Because appellant failed to submit any such medical evidence to support that his federal employment caused an injury, the Board finds that he failed to submit a *prima facie* claim for compensation.⁶

The decision of the Office of Workers' Compensation Programs dated April 16, 1999 is affirmed.

Dated, Washington, D.C.
August 22, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁵ *Earl D. Price*, 39 ECAB 1053 (1988).

⁶ Additional evidence has been submitted since the Office's April 16, 1999 decision. As the Office did not consider this evidence in reaching a final decision, the Board may not consider it for the first time on appeal; *see* 20 C.F.R. § 501.2(c).